

## EXPLANATORY STATEMENT

### *Aged Care Act 1997*

#### *Classification Amendment (2016 Budget Savings Measures) Principles 2017*

##### Authority

Item 9 in the table to section 96-1 of the *Aged Care Act 1997* (the Act) provides that the Minister may make Classification Principles providing for matters required or permitted by Part 2.4 of that Act.

##### Purpose

The purpose of the *Classification Amendment (2016 Budget Savings Measures) Principles 2017* (the Amending Principle) is to amend the *Classification Principles 2014*, to give effect to the measures in the *Budget Savings (Omnibus) Act 2016* made on 16 September 2016 (the Amending Act). The Amending Principle also includes restrictions on who can be appointed an adviser to assist approved providers make appraisals or reappraisals.

##### Background

The Amending Act increased the compliance powers of the Secretary in relation to the Department of Health's reviews (audits) of care recipient appraisals submitted by aged care providers to receive Commonwealth subsidy.

These amendments are required to give effect to the changes implemented through the Amending Act.

The amendments relate to appraisals of care recipients' care needs undertaken under the Act. It is the responsibility under the Act for an approved provider to ensure it conducts its appraisals in a proper manner. An appraisal of a care recipient's care needs is used to determine the amount of Commonwealth subsidy payable to the approved provider.

The changes being implemented through this Amending Principle will not affect the level of care provided to care recipients. The changes will assist to ensure the correct amount of subsidy is being paid to approved providers of aged care.

It is important to note that ACFI review reconsiderations relate to the subsidy paid by the Australian Government to approved providers of residential aged care, not care recipients. It is the responsibility of approved providers to ensure the assessed care needs of their care recipients appropriately meet the requirements of the *Aged Care Act 1997*.

The Department of Health conducts ACFI reviews and reconsiderations to ensure the ACFI subsidy accurately reflects the assessed care needs of care recipients.

##### Details

The Amending Principle will ensure the following measures established by the Amending Act are implemented on 1 March 2017:

- The classification of care recipients will take into account the qualifications of persons involved in providing care to the care recipient, and the manner in which care was provided to the care recipient.
- Approved providers will be required to pay an application fee to request that the Secretary reconsider a decision to change a care recipient's classification.
- The removal of adviser panels, and requiring certain classes of persons to be excluded from being appointed as an adviser.

#### Documents Incorporated by Reference

This Amending Principle incorporates the following documents by reference:

- The Answer Appraisal Pack.
- The Assessment Pack.
- The User Guide.

These documents are accessible at <http://www.agedcare.health.gov.au>.

#### Consultation

The Office of Parliamentary Council, the Department of Finance and Attorney General's Department were consulted.

In developing this measure, the Department consulted with the sector and provided details of the Amending Principles to aged care peak bodies. Responses were received from Aged Care Services Australia, the Aged Care Guild, Council on the Ageing, and Leading Age Services Australia. As a result of industry feedback, the Department decided to postpone further amendments to the Classification Principles, in relation to its policy that approved providers must reappraise care recipients if their care needs have significantly decreased. The Department will consult further with industry about how this may operate.

This Amending Principle commences 1 March 2017.

This Amending Principle is a legislative instrument for the purposes of the *Legislation Act 2003*.

**Details of the Classification Amendment (2016 Budget Savings Measures) Principles 2017**

**1 Name**

Section 1 states that the name of the amending Determination is the *Classification Amendment (2016 Budget Savings Measures) Principles 2017*.

**2 Commencement**

Section 2 states that these amendments commence on 1 March 2017.

**3 Authority**

Section 3 states that this Amending Principle is made under the *Aged Care Act 1997*.

**4 Schedules**

Section 4 states that Schedules 1 and 2 amend the *Classification Principles 2014*.

**Schedule 1 Amendments**

**Item 1 Section 4**

Item 1 repeals the expression used for ‘lowest applicable classification level’ and substitutes with ‘lowest applicable classification level and disqualified individual’ to specify that both these terms are defined under the *Aged Care Act 1997*.

**Item 2 Paragraph 15(2)(a)**

Item 2 repeals the requirement to make the appraisal by completing an Answer Appraisal Pack in accordance with the User Guide, this requirement is now in section 15(3). This item also includes a new requirement to complete the Appraisal Pack in accordance with the requirements mentioned in subsection 15(3).

**Item 3 end of section 15**

Item 3 inserts the requirement to:

- Complete the Answer Appraisal Pack in accordance with the User Guide (which was previously required under section 15(2)).
- If the User Guide requires a directive from a healthcare practitioner, specifies that it may only be taken into account as evidence, if the directive meets the requirements listed in the paragraph.

**Item 4 Section 16**

Item 4 repeals the Section and substitutes with a new Part 16, which specifies that:

- Disqualified individuals are excluded from being appointed as advisers.
- The matters that the Secretary must take into account when deciding the period within which the approved provider must appoint an adviser. These matters include the location of the aged care service, the number of classifications to which the proposed suspension relates, and the extent to which information provided by the approved provider is false, misleading or

inaccurate. However, this provision does not limit the matters that the Secretary may take into account.

#### **Item 5 Section 17**

Item 5 omits the phrase ‘The application’ and substitutes with the phrase ‘For the purposes of section 25-4C(3)(b) of the Act, an application for the lifting of a suspension of an approved provider from making appraisals and reappraisals’. This change clarifies that section 17 of the Classification Principles, relates to the Secretary’s powers under section 25-4C(3)(b) of the Act.

#### **Item 6 After Part 8**

This item inserts Part 9 which specifies that if an approved provider submits a directive by a healthcare practitioner as evidence in an appraisal, the Secretary must take into account the manner in which treatment was provided, and the qualifications of the person providing the treatment.

This item also inserts Part 10 which specifies that:

- The application fee for an approved provider to request that the Secretary reconsider a decision to change a care recipient’s classification is \$375 per question.
- The Secretary may waive this fee if there are exceptional circumstances.
- The fee may be refunded if the approved provider does not give any material that was not available to the Secretary for the purposes of the review of the classification, and as a result of this decision the classification that applied to the care recipient before the review is reinstated.

The application fee was been introduced to encourage approved providers to limit any requests for reconsideration to circumstances to in which there is evidence to show that the classification decision was incorrect. It is intended to encourage approved providers to submit genuine and meritorious applications. This will reduce the current demand on Commonwealth resources arising from such processes.

The Secretary may approve or reject an application to waive the fee. However, this type of decision is not a reviewable decision. This is because the costs would be vastly disproportionate to the significance of the decision and may outweigh the fee amount, depending on how many questions are involved. In addition, a reviewable waiver decision would further delay care recipient’s classification decision.

The provision to waive the fee allows the Secretary to take into account exceptional circumstances, such as:

- The financial viability of the service, and whether the approved provider has the capacity to pay the fee.
- Administrative errors, resulting in an incorrect classification.
- Any other relevant matter.

This decision is not a reviewable decision because it is not suitable for merits review. This decision is of a procedural nature which facilitates the making of a substantive decision in relation to the care recipient’s classification.

A review of such a decision may lead to the proper operation of the administrative decision-making process being unnecessarily frustrated or delayed. In this case, the beneficial effect of merits review is limited by the fact that if an application was made to the Administrative Appeals Tribunal, the cost of the application fee to this body would exceed the cost of the fee in dispute. Any benefits are outweighed by the cost of potentially frustrating the making of substantive decisions.

## **Schedule 2 Amendments**

### **Item 1 Section 4**

Item 1 substitutes “the commencement of the *Classification Amendment (Budget Savings Measures No. 1) Principles 2016*” with “9 December 2016” to specify that this is the date that the Answer Appraisal Pack was published.

### **Item 2 Section 4**

Item 1 substitutes “the commencement of the *Classification Amendment (Budget Savings Measures No. 1) Principles 2016*” with “9 December 2016” to specify that this is the date that the Answer Appraisal Pack was published.

### **Item 3 Section 4**

Item 1 substitutes “the commencement of the *Classification Amendment (Budget Savings Measures No. 1) Principles 2016*” with “9 December 2016” to specify that this is the date that the Answer Appraisal Pack was published.

### **Item 4 Subsection 50(2)**

Item 1 substitutes “the commencement of the *Classification Amendment (Budget Savings Measures No. 1) Principles 2016*” with “9 December 2016” to specify that this is the date that the Answer Appraisal Pack was published.

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### ***Classification Amendment (2016 Budget Savings Measures) Principles 2017***

The *Classification Amendment (2016 Budget Savings Measures) Principles 2017* are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### **Overview of the Legislative Instrument**

This legislative instrument amends the *Classification Amendment (Budget Savings Measures No. 1) Principles 2016*, to strengthen compliance actions that may be undertaken as a result of ACFI reviews by the Department.

The *Classification Amendment (Budget Savings Measures No. 1) Principles 2016* also introduces the removal of ACFI administrator and adviser panels.

### **Human rights implications**

This legislative instrument is compatible with the right to an adequate standard of living and the right to the enjoyment of the highest attainable standard of health and well-being as contained in article 11(1) and article 12(1) of the International Covenant on Economic, Social and Cultural Rights, and article 25 and article 28 of the Convention on the Rights of Persons with Disabilities.

This legislative instrument concerns the subsidies payable to approved providers for the provision of care and services to people with a condition of frailty or disability who require assistance, to achieve and maintain the highest attainable standard of physical and mental health.

### **Conclusion**

This legislative instrument is compatible with human rights as it promotes the human right to an adequate standard of living and the highest attainable standard of physical and mental health.

**The Hon Ken Wyatt**  
**Minister for Aged Care**  
**Minister for Indigenous Health**